

Atty. Docket No. GC-10.6-CON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FIRST NAMED INVENTOR:	SERIAL NO:	FILING DATE	ART UNIT:	PAPER NO.
Miller	09/757,202	Jan. 9, 2001	1623	
TITLE:			EXAMINER:	
Water Insoluble Derivatives of Polyanionic Polysaccharides			White Everett	

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify under 37 CFR 1.8(a) that this correspondence (2 pages) is being transmitted by facsimile to 703-872-9306, TC 1600 addressed to: Commissioner for Patents, Washington, D.C. 20231, on May 6, 2002


Name: Isabelle Blundell

Commissioner for Patents
Washington, D.C. 20231

REPLY

Sir:

In response to the Office Action mailed from the Patent Office on February 7, 2002, applicant submits the following remarks.

REMARKS

Claims 15-30 and 60-76 are pending and rejected. Favorable reconsideration of the pending claims is respectfully requested in view of the following remarks.

Double Patenting Rejection

Claims 15-30 and 60-76 are rejected over US patents 5,760,200 and 6,174,999 under the judicially created doctrine of obviousness-type double patenting. Applicant respectfully traverses the rejections as the Examiner has inappropriately relied on the content of the specification of the cited patents to formulate the instant rejections.

In an obviousness-type double patenting rejection, the obviousness analysis rests on the evaluation of the difference between the invention defined in the pending claims and the

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invention defined in the issued claims. Because the patent(s) underlying the rejection is(are) not available prior art (MPEP §804), the content of the patent(s) specification should not be used to conduct the evaluation of the patentability of the pending claims. Although the courts have acknowledged that some uses of the patent specification may be legitimate, they have allowed so only to the extent that the reference to the patent specification provides support to the **patent claim** (such as evaluation of an obvious variation of an embodiment which support the patent claim) and so long as only the disclosure of the invention claimed in the patent is examined. In the instant rejection, the reliance on the disclosure of "modifying agents" in the specification of the issued patents is inappropriate, as this term does not appear in the claims of the cited patents. Applicant respectfully request that these rejections be reconsidered and withdrawn.

The Examiner is kindly invited to call Applicant's attorney at (617) 591-5698 to foster expeditious disposition of the instant application. Applicant does not believe that any fee is due with this filing. However, should any fee be due, Applicant hereby authorizes payment of such fee from Deposit Account 07-1074.

Respectfully submitted,



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Date: May 6, 2002

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